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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1179th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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GE.96-18005 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PA
UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft concluding observations of the Committee concerning the fifth, sixt
seventh periodic reports of the People's Republic of China (CERD/C/49/Mis
(conference room paper distributed in English only) (continued)

Paragraph 12 (continued)

1. Following a discussion in which Mr. RECHETOV, Mr. FERRERO COSTA, Mr. GARVALOV and Mr. SHERIFIS too part, Mr. WOLFRUM (Country Rapporteur) order to reflect the Committee's concern, proposed to add the following w at the end of the first sentence: including the preservation of places o worship and the exercise of religious rights by members of all ethnic gro The last three sentences of that paragraph should be deleted.

Paragraph 13

2. Mr. WOLFRUM proposed that in paragraph 13 and in the rest of the te the words "alleged" and "allegations" should be replaced by "reported" and "reports".

3. Mr. RECHETOV said that it would be more correct to use the expressi "limited information" instead of "little information" in the fourth line.

Paragraph 14

4. Mr. GARVALOV, referring to Mr. Wolfrum's proposal concerning paragraph 13, said that replacing "allegations" by "reports" in the second sentence would change the meaning. "Reports" had connotations of certain whereas "allegations" did not.

5. Mr. FERRERO COSTA proposed that for clarity's sake the end of the sentence should be reworded as follows: "members of minority nationaliti may not enjoy the same working conditions as persons of Han origin".

6. Mr. CHIGOVERA said that the second line of the paragraph would rea better if the idea of persons of minority origin were replaced by that o minority groups. Moreover, the Committee had not taken a decision conce the word "allegations". Leaving it in the text would give the impression the Committee considered that the State party had not replied to its que at all or that it did not find the information provided by the Chinese delegation credible.

7. Mrs. ZOU said that in China minority groups were paid the same wag the Han population for the same work. However, some people might take a view.

8. Mr. WOLFRUM said that that was precisely why he had chosen to spea "allegations", which he felt was more appropriate in the context. The

Committee had a heavy workload and he therefore asked Mr. Chigovera to adopt a conciliatory approach on the understanding that his viewpoint would be reflected in the summary record.

9. Mr. CHIGOVERA said that, although not convinced by the arguments put forward, he was willing to withdraw his proposal to enable the Committee to make progress.

10. The CHAIRMAN said that, if he heard no objections he would take it that the Committee accepted the amendments proposed by Mr. Ferrero Costa and Mr. Chigovera. However, the word "allegations" would be maintained.

11. It was so decided.

Paragraph 16

12. In connection with the last sentence of the paragraph, Mr. GARVALOV said that he did not see why the Committee should say that it was concerned. Should the State party give up economic development and modernization because traditional ways of life were to be considered sacrosanct?

13. Mr. WOLFRUM pointed out that in some cases the identity of a population group depended largely on its way of life. It was for the group in question to decide whether or not it wanted to give up that lifestyle. The State should not impose any change upon it.

14. Mr. AHMADU said his first impression had been that the sentence was contrary to the principle of active integration; but he now understood Mr. Wolfrum's point of view. However, some aspects of modernization, such as efforts to make schooling generally available, could not be censured systematically.

15. Mr. DIACONU proposed to replace the word "perpetuate" in the second sentence, which gave the idea that racial discrimination had long been practised, by the word "generate". He agreed with Mr. Garvalov that there were good and bad traditions and that the latter should not be maintained if they were in contradiction with human rights standards. What the Committee should ask was that the groups concerned should not be deprived of their right to their own culture. The following wording would perhaps be more appropriate: "In addition, efforts with respect to economic development and modernization should not deprive members of such ethnic groups of their right to their own culture."

16. Mr. de GOUTTES endorsed Mr. Diaconu's proposal but hoped that the idea of traditional ways of life would be maintained in the text.

17. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to replace the word "perpetuate" by "generate" and to adopt Mr. Diaconu's proposal concerning the last sentence, as amended by the addition of the words "particularly traditional ways of life" at the end.

18. It was so decided.

Paragraph 19

19. Mr. GARVALOV proposed to replace the word "urges" at the beginning o the paragraph by "recommends".

20. Mr. van BOVEN said that in the first line it would be better to spe "expressions" rather than "forms" of racial discrimination.

21. Mr. FERRERO COSTA pointed out that, since it was indicated in the s sentence of the paragraph that the Government would welcome technical assistance, the Committee's recommendation in the last sentence was unnecessary. He therefore proposed to combine the two last sentences of paragraph to read: "... would welcome technical assistance towards this that is available through the technical cooperation services of the United Nations Centre for Human Rights".

22. Mr. de GOUTTES, in connection with Mr. van Boven's suggestion to re "forms of racial discrimination' by "expressions of racial discrimination" wondered whether it might not be better to speak of acts of racial discrimination, since that was the usual term.

23. The CHAIRMAN said that, with the amendments proposed by the members the Committee, paragraph 19 would read: "The Committee recommends to the Government to make all acts of racial discrimination, as specified in article 4 of the Convention, punishable by law. In this respect, it note with satisfaction indications that the Government would welcome technical assistance towards this end that is available through the technical cooperation services of the United Nations Centre for Human Rights".

24. It was so decided.

Paragraph 21

25. Mr. RECHETOV poposed to replace the reference in paragraph 21 to national minorities by a reference to ethnic groups, and to delete from t first sentence the word "ethnic", which was unnecessary, before "compositi In the fourth line it would perhaps be prudent to specify that the infor should be provided so far as possible.

26. Mr. DIACONU pointed out that if the Committee wished to have a constructive dialogue with the State party it should perhaps use the same terminology. It would therefore be better to keep the word "nationalitie

27. Mr. AHMADU proposed to delete the word "comprehensive" qualifying "information" in the first line.

28. The CHAIRMAN said that he took it that the Committee wished to del the words "comprehensive" and "ethnic" in the first line, to retain the wo "nationalities" throughout the paragraph and to add in the fourth line th words "so far as possible" after "should be provided".

29. It was so decided.

Paragraph 22

30. Mr. FERRERO COSTA proposed that, to take account of the suggestions made during the consideration of the report of the People's Republic of China, mention should be made of all institutions as well as the Party.

Paragraph 23

31. Mr. WOLFRUM proposed that the last word in the sentence, "completed", should be replaced by "expedited", the idea being to accelerate the elaboration and adoption of special regulations for the five autonomous regions.

Paragraph 24

32. Mr. WOLFRUM thought that it would be better to speak of a substantial alteration in the demographic composition of minority regions.

33. Mr. DIACONU considered it would be more reasonable to ask the State party to reconsider, not to halt, policies affecting the demographic composition of minority regions, since the Committee was not sure what those policies were.

Paragraph 26

34. Mr. FERRERO COSTA proposed to delete the last sentence, which duplicated the wording of paragraph 20.

Paragraph 27

35. Replying to a question by Mr. SHERIFIS concerning the expression "favourable conditions of work", Mr. van BOVEN, supported by Mr. FERRERO COSTA, pointed out that the wording was the same as that of article 5 (e) (i) of the Convention.

36. Mr. GARVALOV said he was in favour of mentioning national minorities rather than non-Han nationalities.

37. Mr. RECHETOV thought that it would be better to speak of appropriate measures to be taken by the State party, without specifying the area of such measures, in order to leave the State party full freedom of action.

38. Following a discussion in which Mr. WOLFRUM, Mr. FERRERO COSTA, Mr. CHIGOVERA and Mr. RECHETOV took part, the CHAIRMAN said that, if he heard no objection, he would take it that the original wording was maintained.

39. It was so decided.

Paragraph 28

40. Mr. YUTZIS thought that the Committee was going too far in asking the State party to undertake a comprehensive review of the educational system. Since the principal aim of the paragraph was to ensure that members of

national minorities had access to education, it would be better to say that the Committee recommended that the State should ensure that national minorities had access to education.

41. Mr. SHAHI pointed out that paragraph 28 referred to minority nationalities and minority areas. However, in some of the preceding paragraphs the Committee had adopted the expression "autonomous regions", which was somewhat restrictive since China had only five autonomous regions but a great many autonomous territories and areas where minorities lived. There seemed to be a some confusion, which should be dispelled.

42. Following an exchange of views in which Mr. CHIGOVERA, Mr. WOLFRUM and Mr. FERRERO COSTA took part, the CHAIRMAN asked Mr. Shahi to review the whole text of the draft to see where the reference should be to autonomous regions and where to autonomous territories or territories where minorities lived.

Paragraph 29

43. Mr. YUTZIS said that the wording of the paragraph was too neutral and that the adverse effects of economic development should be mentioned.

44. Mr. CHIGOVERA pointed out that economic development did not have adverse effects alone.

45. Mr. GARVALOV suggested that the wording of paragraph 16 might be used again in paragraph 29.

46. Mr. RECHETOV said that it was difficult for the Committee to speak at the outset of the adverse effects of economic development on the exercise of certain rights since it was unable to determine the adverse or positive nature of all the consequences of economic development.

47. Following suggestions made by Mr. WOLFRUM, Mr. DIACONU, Mr. SHAHI and Mr.RECHETOV, the CHAIRMAN proposed that the Committee should recommend that special attention should be given to any adverse effects of economic development and modernization.

48. It was so decided.

Paragraph 30

49. Mr. de GOUTTES proposed to include before paragraph 30 the following new paragraph:

> "With respect to article 6 of the Convention, the Committee recommends that in its next report the State party should provide information and statistics on complaints and judicial decisions in respect of acts of racism in all their forms".

50. In connection with the reference to making the Convention widely available, which appeared at the end of paragraph 30, he said that he would

prefer to supplement the text of paragraph 21 by the addition of wording along the lines of that already agreed by the Committee in its conclusions concerning the reports of other States parties, namely:

> "The Committee recommends that the State party should give publicity at the internal level to its seventh periodic report and the concluding observations of the Committee".

51. Mr. CHIGOVERA said he would like to delete the reference to the United Nations Decade for Human Rights Education, as in the Committee's conclusions concerning the report of Bolivia.

52. Mr. SHERIFIS said that, if the amendment of Mr. de Gouttes was adopted, he did not see how the last sentence of the current text of paragraph 30 would read.

53. Following a discussion among Mr. SHERIFIS, Mr. GARVALOV, Mr. WOLFRUM, Mr. AHMADU and Mr. FERRERO COSTA as to how the State party should be asked to give nation-wide publicity to the Committee's terms of reference and its work, Mr. WOLFRUM proposed the following wording: "The Committee recommends that the text of the Convention, the State report and the present concluding observations of the Committee be widely disseminated and available in national languages, particularly those spoken in autonomous areas."

54. The CHAIRMAN suggested that the Committee should adopt that text.

55. It was so decided.

Paragraph 31

56. Mr. SHERIFIS recalled that the Committee had decided to moderate the recommendation every time it had occasion to make it by asking the State party to ratify the amendments in question at its earliest convenience.

57. Mr. SHAHI pointed out that paragraph 2 of the conclusions should refer to 56 nationalities including the Han, and not 55.

58. In accordance with the request that had been made to him, he explained that the expression "autonomous regions" was the right one in paragraphs 11, 13, 23 and 24 but that in paragraph 28 it would be better to speak of autonomous "areas".

59. Mr. CHIGOVERA, speaking in connection with Mr. Shahi's statement, said that in paragraphs 11 and 24 the words "autonomous areas" would be more appropriate.

60. Mrs. ZOU disputed the validity of the allegations in some paragraphs of the conclusions. In connection with paragraph 11 specifically, the Committee had probably not clearly understood the explanations given by the Chinese Ambassador. She recalled that he had given the census figures for 1990 and 1995, which showed that in Tibet the Tibetan population, already very much in the majority, had increased even more in proportion to the Han population.

The same thing had been observed in Xinjiang during that period. She requested that her reservations should be recorded in a footnote.

61. Mr. WOLFRUM said that statistics could be misleading. For instance, in 1949 the proportion of Han had been only 6.9 per cent in Xinjiang, but by 1953 it had risen to 37.5 per cent. He concluded that recent census figures did not reflect previous migrations.

62. Mrs. ZOU explained that the 1953 figures had been calculated just after the liberation of Tibet which had brought about massive population movements, but after which the troops had been withdrawn.

63. Mr. WOLFRUM said that he had been speaking of Xinjiang and not Tibet. He would prefer to resume the discussion when the next report of China was considered.

64. Mr. FERRERO COSTA drew Mrs. Zou's attention to the fact that the experts on the Committee were independent and did not represent their Governments.

65. Mr. SHAHI asked Mr. Wolfrum how he justified the reference in paragraph 11 to Han wishing to settle in autonomous regions.

66. Mr. WOLFRUM pointed out that in paragraph 11 the Committee stated that it was concerned with reports concerning incentives granted to the Han. It was for the Government of the People's Republic of China to say whether those reports were released or not.

67. Mr. van BOVEN pointed out that although other members of the Committee including the current Chairman had in the past found themselves in a position similar to that of Mrs. Zou, the Committee had never included footnotes about them in its conclusions. Since her views would be reflected in the summary record of the current meeting, Mrs. Zou ought to be able to withdraw her request. It would be useful, however, if the question of principle involved were discussed with the chairpersons of the other treaty bodies. While he was not against including footnotes, he suggested that for the sake of consistency the Committee should avoid them in the absence of a decision to the contrary.

68. Mr. RECHETOV said that he had never had any doubts about the experts' independence, but considered that the principle that an expert should not participate when his own country's report was considered was not justified. Indeed, it was incompatible with article 8 of the Convention, which provided that the experts should be representative of the principal legal systems. It was the Committee's terms of reference under the Convention, not the practice of other bodies, that should guide the conduct of the experts. By barring itself from hearing an expert from the country whose report was under consideration, the Committee would be depriving itself of valuable information. He agreed with Mr. van Boven that a footnote was not the best way of expressing disagreement.

69. Mr. GARVALOV said that of course Mrs. Zou had the right to express her opinion. He considered that when any expert had serious reservations to some

or all of the draft conclusions, that should be made clear. However, since summary records were available, Mrs. Zou might not insist on including a footnote.

70. Mr. de GOUTTES said the present discussion showed that a problem existed with respect to the attitude of an expert when the Committee was considering his country's report. As he (Mr. de Gouttes) saw it, an expert had a perfect right to speak at that juncture, but it was wiser for him not to do so.

71. He pointed out to Mr. Pechetov that article 8 (1) also referred to the need for experts to be impartial. Among other bodies with independent members, the European Court of Human Rights wished to retain at least an "appearance" of impartiality, and in one of its recommendations the Committee itself had stressed the need to respect the independence of the experts. They should therefore contribute to that respect by their own attitude. He agreed with Mr. van Boven that it would be advisable for the Chairman to bring up the matter at his meeting with the chairpersons of the other treaty bodies.

72. Mr. AHMADU said that, whatever the moral standing and impartiality of the experts, they were not men from Mars. They could take part in considering the report of their own country, not necessarily to defend it but merely to give further information that might be useful to the Committee that would not be a departure from the duty to be impartial. At the forty-eighth session of the Committee he had taken part in the discussions concerning Nigeria - true, in closed session. However, in the interest of the members of the Committee themselves, it would be better not to include in reports footnotes such as the one requested by Mrs. Zou: thus the experts could make the point to their authorities that the Committee's established practice was that an expert should not take part in the consideration of the report of his own country.

73. He therefore hoped that Mrs. Zou would not insist on including a footnote.

74. The CHAIRMAN requested the members of the Committee to confine themselves to considering the request submitted by Mrs. Zou at the current meeting, rather than making the discussion more general.

75. Mr. LECHUGA HEVIA considered that all the experts had the right to take part in all the Committee's discussions, including those on the report of their own country. Mrs. Zou had expressed her opinion and had given further details concerning China; she had the right to ask for a footnote indicating her disagreement with certain parts of the report, but it was for the Committee to decide whether or not to grant that request. His own view was that it was better not to refuse.

76. Mr. CHIGOVERA said that the present discussion clearly showed that the members of the Committee were not agreed on the implications of article 8 of the Convention as far as their duties were concerned: apparently they did not even agree on the meaning of the word "implications". The Committee had to find time to consider that question in the light of the opinions to be expressed at the meeting of the chairpersons of the treaty bodies. In the absence of a decision on that point the Committee could not grant Mrs. Zou's

request, since at its previous session it had rejected a similar request by Mr. Banton (CERD/C/SR.1153, para. 41). He would therefore be happy if Mrs. Zou withdrew her request.

77. Mrs. ZOU said that she had asked for the footnote to be included having been assured by the Chairman that she could do so. If her request created too many difficulties she was prepared to withdraw it, on the understanding that her views would be set out in the summary record.

78. Mr. YUTZIS said that the present discussion was taking place partly because the Committee had not considered the report of China in sufficient depth. The Committee should learn from that and avoid making the same mistake at its next session. Secondly, it was essential for the members of the Committee not merely to be impartial but to show themselves to be impartial: a good way of doing so was not to take part in the Committee's discussions when the reports of their own countries were being considered. Thirdly, the freedom of expression of the members of the Committee must not be infringed in any way. The Committee had to find a fair balance between those three requirements.

79. Mr. VALENCIA RODRIGUEZ said that up till now, in a desire to discharge their duty of impartiality under article 8 of the Convention, the members of the Committee had voluntarily refrained from participating in the consideration of their own country's report: either they did not attend the meeting or they kept silent. Up till now the established practice had been not to mention the fact that the particular experts did not participate, since that might be interpreted as meaning that expert in question had either wished to support or, on the contrary, not to support his country's official position, which would be a breach of the duty of independence and impartiality set out in article 8 of the Convention and also in the solemn declaration made by the members of the Committee when they took up their duties.

80. He stressed the need, whenever a report was considered, for a very extensive dialogue with the representative of the State party, who was its spokesman and put forward its official position.

81. Mrs. SADIQ ALI pointed out that she had never taken part in the consideration of her country's report. She had merely replied to a question about languages on a single occasion.

82. Mr. SHAHI said he was also in favour of the practice of experts not taking part in the consideration of their own countries reports. However, it should be realized that not all countries understood that when one of their nationals was a member of a body like the Committee which was highly critical of that country, their expert was not to blame. It would therefore protect the independence of members to make sure that the Committee's practice was known to all: a given expert could thus justify not taking part in a debate in which his country might be strongly criticized by drawing attention to the established practice. He could therefore understand Mrs. Zou's request. He hoped that the issue would be considered at the meeting of the chairpersons of the treaty bodies and that an appropriate article might be included in the Committee's rules of procedure. It was true that the members of the Committee

were independent experts appointed by the General Assembly, but at the proposal of their Government. Between the experts and their Governments, therefore, there was a link that could not be totally severed.

83. Mr. WOLFRUM said that since the Chairman had encouraged Mrs. Zou to ask for a footnote indicating her position to be included in the Committee's report, the note ought to be included: the Committee should not reject her request. He too considered that experts should not take part in the consideration of reports submitted by their own countries. Non-participation should be the rule, but exceptions allowed. He unreservedly supported the statement of Mr. Yutzis. The Committee's difficulties in adopting its conclusions concerning India and China were in his view due to the inadequacy of its discussions with the representatives of the States parties. He therefore appealed to the Chairman to ensure that, at the next session, consideration of the reports of States should be carried out according to the previous arrangements: the report should be presented by the State party in the afternoon, and the representative of the State should provide replies and the discussion with the Committee should be held at the next morning's meeting. That gave the delegation of the State party time for thought. The Committee had used that procedure at previous sessions and the results had been much more satisfactory.

84. The CHAIRMAN pointed out that Mrs. Zou was no longer asking for a footnote to be included, since her views would be reflected in the summary record.

85. With respect to the organization of the Committee's work at its next session, proposals would be put to the members for consideration before the end of the current session.

86. Mr. de GOUTTES pointed out that there were two kinds of footnote: the footnote could say that the expert did not endorse certain observations of the Committee or it could say that as an independent expert a member of the Committee had remained outside the discussion. It was such a note that Mr. Banton, at that time an ordinary member of the Committee, had proposed to include in the Committee's report at the forty-eighth session when the Committee had considered the report of the United Kingdom. He (Mr. de Gouttes) had supported that proposal (CERD/C/SR.1153, para. 34). The issue should be brought up at the meeting of the chairpersons of the treaty bodies.

87. He wished to make a statement on another point: at the current session the Committee had adopted almost all of its conclusions on various countries in the only language version available, namely English (with the exception of the conclusions concerning Brazil and Korea). Accordingly, he reserved his position on the French translation, since the conclusions had not been adopted in his official working language. That statement applied to the conclusions concerning all the countries except Brazil and Korea.

88. The CHAIRMAN recalled that the Committee had acknowledged the legitimacy of the second point made by Mr. de Gouttes.

89. Mr. RECHETOV said the Committee's work showed that there was no doubt about the independence of the experts who were its members. They did not hesitate to criticize their own Governments. He had always defended the ri to give his own views as an independent expert if the need arose.

90. Mr. GARVALOV, speaking on a point of order, recalled that the report the Committee as a whole, including footnotes and references, was a collect document which had to be approved by the entire Committee.

91. The draft conclusions of the Committee concerning the fifth, sixth ar seventh periodic reports of the People's Republic of China as a whole, as orally amended, were adopted.

OTHER BUSINESS

92. Mr. AHMADU asked for a final version of the conclusions adopted by th Committee to be made available to the members before they left Geneva. Conclusions such as those just adopted concerning a country as important a China would give them powerful arguments to bring up with their own authorities: they could make the point that the Committee had not been reticent in making suggestions and recommendations to the State party.

93. Mr. SHAHI, speaking on a point of order, asked whether the Secretari could not distribute to the members of the Committee a corrected version o the conclusions concerning India so that members who so desired could writ the amendments adopted on their own copies.

94. The CHAIRMAN said that the necessary arrangements would be made by t Secretariat.

The meeting rose at 6 p.m.